



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201324025

MAR 18 2013

Uniform Issue List: 402.00-00

SE: T: EP: RA: T1

Legend:

Taxpayer A	=
Taxpayer B	=
Company C	=
Plan D	=
Financial Institution E	=
Financial Institution F	=
Plan G	=
Financial Institution H	=
Account I	=
Account J	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Amount 5	=

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Amount 6

=

Dear :

This letter is in response to a request for a letter ruling dated October 19, 2012, as supplemented by correspondence dated December 10, 2012, and January 10, 2013, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code"), regarding the distributions of Amount 1 and Amount 2 from Plan D.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that she received a distribution of Amount 1 from Plan D. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 402(c)(3) was due to incorrect advice provided by Financial Institution H. Taxpayer A further represents that Amount 1 has not been used for any purpose.

Taxpayer B represents that he received a distribution of Amount 2 from Plan D. Taxpayer B asserts that his failure to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 402(c)(3) was due to incorrect advice provided by Financial Institution H. Taxpayer B further represents that Amount 2 has not been used for any purpose.

Taxpayer A operates Company C. Taxpayer A and Taxpayer B are employed by Company C and participated in its qualified retirement plan, Plan D. The custodian and administrator of Plan D was Financial Institution E. In September, 2010, Taxpayer A decided to terminate Plan D and adopt a new plan with Financial Institution F. On September , 20 , Company C adopted Plan G with Financial Institution F. Taxpayer A and Taxpayer B received distributions from Plan D net of Federal taxes on October , 20 . Taxpayer A received a distribution of Amount 3 with Amount 1 withheld for Federal income tax, resulting in a net distribution of Amount 5. Taxpayer B received a distribution of Amount 4 with Amount 2 withheld for Federal income tax, resulting in a net distribution of Amount 6. On October , 20 , the checks for Amounts 5 and 6 were deposited into Account I and Account J, respectively, separate accounts for Taxpayer A and Taxpayer B within Plan G. Financial Institution H, a representative of Financial Institution F, was the plan administrator for Plan G.

The Taxpayers intended the transactions to be direct transfers between the two retirement plans. However, this action was not done and Financial Institution E withheld federal taxes on the two distributions. When asked by Financial

Institution F to reverse the transaction, Financial Institution E said it had already sent the withheld taxes to the Internal Revenue Service (IRS). The Taxpayers were then advised by a representative of Financial Institution H, they did not have to deposit the withheld taxes into the Plan until they received the funds back from IRS as a tax refund. A letter from Financial Institution H, acknowledging this incorrect advice, was submitted with the ruling request. On July , 20 , after receiving their 20 refund, the Taxpayers deposited the taxes withheld (Amount 1 and Amount 2) into the Plan G. The mistake was discovered in 20 when the Taxpayers received a deficiency notice from the Service.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(A) of the Code with respect to the distributions of Amount 3 and Amount 4.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment

by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A and Taxpayer B is consistent with their assertion that their failure to accomplish a timely rollover of Amount 1 and Amount 2 was due to their reliance on the incorrect advice by Financial Institution H.

Therefore, pursuant to section 402(c)(3)(B), the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amount 1 and Amount 2 from Plan D. Provided all other requirements of section 402(c) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount 1 contributed by Taxpayer A to Plan D and Amount 2 contributed by Taxpayer B to Plan D, on July , 20 , will be considered a rollover contribution within the meaning of section 402(c) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (), at ().

Sincerely yours,

Carlton A. Wathers

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: